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# In the
# SUPREME COURT OF THE UNITED STATES
## October Term, 1954

**No. 88**

MARGARET SHIVER WILLIAMS,

Petitioner,

VS.

CAROLINA LIFE INSURANCE COMPANY,
COLONIAL LIFE & ACCIDENT INSURANCE COMPANY, and
LIFE AND CASUALTY INSURANCE COMPANY OF TENNESSEE,

Respondents.

**Petition of Respondents for Rehearing of Order Granting Certiorari and Reversing Judgment**

***and***

**Brief in Support of Petition for Rehearing and in Opposition to Grant of Writ of Certiorari**

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Respondents.

**Petition of Respondents for Rehearing of Order Granting Certiorari and Reversing Judgment**

The Carolina Life Insurance Company, The Colonial Life & Accident Insurance Company, and The Life & Casualty Insurance Company of Tennessee pray that this Honorable Court grant rehearing of its order of October 14, 1954, granting the petition for writ of certiorari and reversing the judgment of the Court of Appeals for the Fifth Circuit in the above entitled case. These petitioners further pray that the order of October 14, 1954, be vacated and that the writ of certiorari be dismissed and the petition therefor denied, or in the alternative, that the order of October 14, 1954, be modified to permit the case to be assigned for argument.

## REASONS FOR GRANTING REHEARING AND DISMISSING THE WRIT.

It is respectfully submitted that a rehearing of the

order of October 14, 1954, should be granted on the following grounds:

1. In granting the petition for certiorari, this Court did not have before it grounds appropriate for the granting of the writ conforming to the rules and procedures formulated by the Court.

2. In summarily reversing the judgment of the Court of Appeals, this Court has precluded petitioners from presenting substantial argument that the decision of the Court of Appeals correctly applied and followed the controlling substantive law of Georgia, and that all procedural requirements of the federal forum were observed.

## CERTIORARI SHOULD NOT HAVE BEEN GRANTED.

In setting forth their reasons against the propriety of granting certiorari petitioners for rehearing at the outset ask the indulgence of the Court, in that briefs in opposition to the application were not filed. In reaching the decision as to whether or not to file such briefs, petitioners had regard for, and placed reliance upon, the following circumstances:

1. In the petition for certiorari there appeared none of the grounds or reasons justifying review on certiorari specified either in Rule 38(b) of the old rules, or in Rule 19(1)(b) of the new rules of this Court:

(a) No conflict of decisions between Courts of Appeal upon the same subject existed because the law of Georgia, which was controlling, eliminated any such conflict;

(b) The petition did not contend that any important state or territorial question was decided in a way in conflict with applicable state or territorial law;

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(c) It did not contend that any important question of federal law was raised which should be settled by this court;

(d) No federal question having been raised, obviously none could be in conflict with the applicable decisions of this court; and, finally,

(e) The petition claimed no departure in either lower court from the accepted and usual course of judicial proceedings.

Conceding, as we must, that the specifications of the above rule neither control nor fully measure this court's discretion, still, under those specifications it appeared clear that recognizable grounds for certiorari did not exist.

2. In the second place, this court has declared on numerous occasions that the granting of the writ is not warranted merely to review the evidence or inferences drawn from it, or to discuss specific facts. *General Talking Pictures Corporation v. Western Electric Co.*, 304 U.S. 175, 178; *United States v. Johnston*, 268 U.S. 220, 227; *Southern Power Company v. North Carolina Public Service Co.*, 263 U.S. 508, 509; *Houston Oil Co. of Texas v. Goodrich*, 245 U.S. 440; *New York Central & Hartford R. R. Co. v. Kinney*, 260 U.S. 340, 345.

Since the order, sought to be reviewed on rehearing, does not set forth the reasons for granting certiorari, we believe it to be a not unwarranted assumption that the court, in granting certiorari, has either undertaken to review the facts in the light of the applicant's limited statement of the case, or has granted certiorari because of our procedural failure to file a response to the petition for certiorari.

We cannot but believe that this Honorable Court was

misled by the statement of the question presented as set forth on page 2 of the petition for certiorari. The question was not whether it was a jury function to determine which of several possible accidental injuries caused death, but whether, in the present case, there was any evidence, other than mere guess or speculation, upon which such a jury determination could be based.

Believing that justice will here be done not by departing from the procedures set out above, but by adhering thereto, petitioners for rehearing respectfully, and at this juncture, ask the indulgence of the Court to the extent of considering petitioners' argument against the granting of certiorari.

We have briefed this question fully.[1] We hopefully ask for this Court's consideration thereof in connection with this petition for rehearing and that the Court, under the circumstances, will not bar petitioners for rehearing from relief to which they can demonstrate themselves entitled.

## THIS COURT SHOULD NOT BY SUMMARY REVERSAL DEPRIVE PETITIONERS FOR REHEARING OF THE OPPORTUNITY OF PRESENTING ARGUMENT THAT THE COURT OF APPEALS RENDERED A CORRECT DECISION.

Inasmuch as the order granting certiorari and reversing the judgment below states no reasons therefor and cites no rule or precedent, we frankly can only guess at why such summary treatment was accorded this case. This Court might have found reasons for the grant of certiorari without so stating, as it seems to be its practice simply to enter an order of grant or denial;

[1]Brief is set forth immediately following this petition. (Infra, p. 9).

but we are unable to find but one other case where this Court has summarily reversed a final judgment without a stated reason or the citation of some previous decision.[2] Some may have escaped our attention. And in the single case discovered the writ was vacated upon a timely petition for rehearing and certiorari was denied.[3]

This Court has repeatedly emphasized the importance of a statement of the grounds of a decision both as to facts and law as an aid to litigants and to the Court itself. *Baltimore & Ohio Railroad Co. v. United States*, 279 U.S. 781. This Court, by its practice has imposed such a rule upon itself and has emphasized its importance to those courts subject to its revision and supervision.

It is true that in some cases this Court has granted a petition for certiorari and at the same time has summarily reversed the judgment below. *Securities & Exchange Commission vs. Otis & Company*, 338 U.S. 843; *Dye v. Johnson*, 338 U.S. 864; *Ewing v. Gardner*, 341 U.S. 321; *Sweeney v. Woodall*, 344 U.S. 86; and this although briefs for both the petitioner and respondent were filed. Some authorities, more experienced than ourselves, suggest that such summary reversals are only entered where the decision below is so clearly erroneous as to make argument before this Court a waste of time. *Supreme Court Practice* by Stern and Gressman, (2nd Edition) pp. 155-157. What is impressive to us, however, is that in each of these cases the Court wrote opinions or cited in the order some authority upon which its action was based.

In search of some clue as to the significance of a summary reversal where no reasons were stated or

[2] *Thibaut v. Car and General Insurance Corp.*, 332 U.S. 571

[3] *Thibaut v. Car and General Insurance Corp.*, 332 U.S. 828.

citations given, we also find, from text authority, admonition of the danger inherent in not appearing in opposition to a petition for certiorari. *Jurisdiction of the Supreme Court of the United States*, by Robertson & Kirkham, (Wolfson & Kurland Edition), Sec. 315, pp. 600-603. According to that text (citing the Clerk of this Court) some twenty cases during the October Terms 1928-1947, were reversed or vacated on consideration of the petition for certiorari alone, no response having been filed. Upon examination of these cases we find that this Court, in all save one, either wrote a full opinion or in entering its order either cited authority or stated the reasons for its action. The one case in which this was not done was the case of *Thibaut v. Car and General Insurance Corp.*, 332 U.S. 571. In that case the Court simply reversed a judgment in much the same fashion as the instant case, but subsequently upon petition for rehearing, this order was vacated and certiorari was denied. **332 U.S. 828.** Petitioners rely on that case as a precedent authorizing the present petition.

We cannot believe that summary reversal ensues as a matter of course merely because no response is filed to a petition for certiorari. Nothing in this court's rules or in its announced decisions would seem so to indicate. Nor do we believe that the petition in this case discloses any basis for granting the writ by any of the criteria there established. We can only conclude therefore that because of the volume of pending applications,[4] and because of our own dereliction in not properly briefing the Court, the insignificance of the issues presented (certiorari-wise) was overlooked. Such a brief is set out immediately following this petition. We concede our previous dereliction in this respect and respectfully

[4]See dissenting opinion of Mr. Justice Frankfurter in *Bankers Life & Casualty Company v. Holland, et al.*, 346 U.S. 379.

request that rehearing be granted and that our brief be considered, believing earnestly that the ends of justice will thus be best served.

## CONCLUSION.

For the reasons set forth above, it is respectfully urged that rehearing be granted and that, upon such rehearing, the writ of certiorari to the Court of Appeals for the Fifth Circuit be dismissed and the petition therefor denied, or in the alternative, that the order of October 14, 1954, be modified to permit the case to be assigned for argument.

Respectfully submitted,

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## CERTIFICATE OF COUNSEL

I hereby certify that the foregoing petition for rehearing is presented in good faith and not for delay and is in compliance with Rule 58(1) of the Rules of this Court.

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**Brief in Support of Petition for Rehearing and in Opposition to the Granting of Certiorari**

## OPINION BELOW

The opinion of the Court of Appeals for the Fifth Circuit is reported at 210 F. (2d) 477.

## JURISDICTION

The jurisdictional requisites are adequately set forth in the petition for certiorari.

## QUESTION PRESENTED

Whether, in the present case, there was any evidence, other than mere guess, speculation, theory, conjecture, possibility or surmise, upon which a jury determination could be based.

## CONSTITUTIONAL PROVISION, STATUTE OR REGULATION

No constitutional provision, statute or regulation, federal or state, is involved.

## STATEMENT

We know of no more exact, fair or impartial statement of this case than that made by the Court of Appeals and we are loath to attempt at this juncture to improve upon it. We do not quarrel with the petitioner's statement of the case (Petition, p. 4, 5) so much for what it states as for what it omits, however, we are unable to accept his statements and analysis of ultimate fact (Petition, p. 8-11), and insist that the evidential facts disclosed by the record do not support such factual conclusions. At this point we deem it appropriate to concisely restate the case for the convenience of this Court.

### (a) The Case

The petitioner for certiorari, as plaintiff, filed separate actions (R. 2-5) (R. 8-11) (R. 14-21) in the United States District Court for the Middle District of Georgia to recover on policies of insurance issued by these respondents, as defendants, whereby each of the latter promised to pay the former a stated sum for the loss of life of Theodore Williams, husband of the plaintiff, resulting from bodily injuries "effected solely through external, violent and accidental means," provided that disease or infirmity shall not contribute to the death of the insured. Defendants filed responsive pleadings. (R. 24-25) (R. 25-26) (R. 27-30). The actions were thereafter consolidated. The complaints were amended

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on the date of trial (R. 6-8) (R. 11-13) (R. 21-23), and a jury trial had.

At the conclusion of plaintiff's evidence and again at the close of all of the evidence, defendants moved the court to direct the jury to return a verdict in their favor on the ground that the plaintiff had failed to prove that the death of the insured resulted directly, independently and exclusively of all other causes from bodily injuries effected solely through external, violent and accidental means. The jury returned verdicts in favor of the plaintiff. Thereafter defendants filed motions to set aside the verdicts and enter judgments in their favor in accordance with their prior motion, or in the alternative to grant a new trial. The motions were overruled. Upon the judgments entered in favor of the plaintiff, consolidated appeals were taken to the Court of Appeals. On February 23, 1954, the judgments appealed were reversed; on March 20, 1954, rehearing was denied, and on April 21, 1954, an extraordinary motion for rehearing was denied. 210 F. (2d) 477. Application was then made to this Court for writ of certiorari.

### (b) The Facts

On November 17, 1951, at about 3:00 P.M. (R. 36) Williams, a farmer 37 years old, six feet three and a half inches tall and weighing approximately 220 pounds (R. 76) (R. 31) went into a pasture on the farm of a neighbor some five or six miles from his home (R. 48) to catch a horse and bring it to a nearby barn for two children to ride. (R. 36). On this occasion he took with him several ears of corn. (R. 6). He did not carry a bridle, a frequent custom of his. (R. 77). Price, a tenant on the farm (R. 39), who was then hunting rabbits

(R. 39) in the pasture and the adjoining woods (R. 38) saw Williams signaling and whistling for the horse but no one saw him catch the horse or attempt to mount the animal, or saw him alive near the horse. A short time thereafter Price observed Williams again. This time he was walking toward the highway and away from the horse. (R. 38).

After an interval of about thirty minutes, while still hunting, Price fired one shot. (R. 38). This was at a point approximately four or five hundred feet from the point where the body of Williams was subsequently found. (R. 38).

Thereafter Price returned to the area where he had first seen Williams and at this time his attention was attracted to two children who were then calling for Williams (R. 38) and at the same time he observed the horse grazing nearby (R. 39) and in the proximity to the place where Williams' body was later found. Price walked up to where the children were and then undertook to run the horse up to the barn and into the lot. This he eventually did, but it required some 30 or 40 minutes, the horse continuing to run around in the immediate area where the body of Williams was later found. (R. 39). After running the horse up he bridled it, and saddled it for the children. (R. 39).

Thereafter, about 6:00 P.M., Mrs. Price went into the pasture to get her some firewood and there she discovered the body of Williams in the same area (R. 46) about 50 feet from the pasture edge near some high weeds. (R. 36).

The deceased was found lying on his back (R. 41) and the only external mark or wound on the body was a small and very superficial cut one-half inch long and one-eighth inch deep on the right cheek (R. 42), and

from which blood had flowed to the ground over his ear. (R. 42). There were no other lesions (R. 51) and no external signs of any bruises or trauma. (R. 57). There was dirt on his face (R. 43), his cap was 3 to 5 feet from his body, two ears of corn were on the ground about 4 feet from his right side (R. 42) and one ear of corn was lying about a foot from his left hand. (R. 44). Some of the ears showed evidence of having been bitten off by the horse and some corn had been shelled from one of the ears. (R. 44). There were horse tracks in the immediate area. These tracks approached from the south, went right around the body where they were much more deeply impressed in the earth than elsewhere, and then led away to the east. (R. 42, 43).

On previous occasions Williams had been seen to "jump on" the horse and ride bareback without a bridle (R. 77); that the horse, although small (R. 47) and gentle (R. 77) was gun shy and on a previous occasion had thrown a rider when a gun had been fired near him. (R. 43).

Evidence was also introduced by the plaintiff that 7 or 8 weeks after the accident the clothing of the deceased was examined by the deceased's widow (R. 78) and deceased's uncle (R. 43) and that reddish brown horse hair of a color matching the horse above described was discovered thereon. This clothing was not offered in evidence. (R. 44).

The cause of death, according to undisputed medical testimony, was a rupture of the aorta, the great trunk artery of the body which carries the blood away from the heart and feeds it to the entire body. (R. 75). Plaintiff introduced evidence to show that the insured was not suffering from any known pre-existing disease or infirmity. (R. 30, 31) (R. 76). Defendant introduced

evidence to show a diseased aorta. (R. 100). Plaintiff introduced evidence to the effect that the rupture could have been caused by a fall such as would result from being thrown from a horse or otherwise. (R. 69). The same expert also testified that a rupture also might be caused by some unusual activity, stress or strain, as for example, where an individual steps off a curb or has a rupture because of the unusual stress or strain in trying to catch himself from falling; or is resisting injury or is resisting anything that might cause discomfort to him or injury; or who suffers a rupture because of a strain in jumping on or over an object. (R. 60). Defendants introduced undisputed evidence to the effect that the usual and ordinary way to mount a horse bareback is to grasp with one hand the mane of the horse, put the other hand on its back, give a spring and jump on the horse and land on your stomach and then twist around and sit up with legs astride the horse. (R. 92). Plaintiff's medical expert testified that the rupturing of the aorta can be caused by pressure on the stomach muscles and the abdominal muscles. (R. 61, 62).

### (c) The Evidentiary Contentions

Plaintiff contended from the evidence that Williams was on the horse, that the horse was frightened by a gunshot, that Williams was thrown from the horse and that the fall was the cause of his death.

The defendants contended that there was no evidence that the horse and the deceased were alive together at any time and that the testimony adduced from plaintiff's own witnesses equally support each of two inconsistent theories, one that Williams met his death as a result of a voluntary exertion or strain, and the other that it was due to an accident; and that the jury was thus confronted with the mere choice of inconsistent

propositions, neither of which were established by legitimate proof.

## ARGUMENT

The issue in the present case is not one of substantive law, but of the sufficiency of evidence. The Court of Appeals has not laid down any novel proposition of law. In fact it has applied principles so often repeated as to have become axiomatic. The petitioner for certiorari has failed altogether to properly state the question presented. She would have this Court believe that the Court of Appeals laid down a rule requiring a plaintiff to pin-point the details of an accident, which is not what that Court did. That Court merely found that there was no evidence of any accident, but that the verdict was based upon mere speculation. What this Court is really asked to do is to review the evidence, something which this Court has expressed a disinclination to do.[1]

On this record the decision of the Court of Appeals is manifestly correct. There are not present in the petition for certiorari any of the grounds or reasons when measured by the criteria established by this Court which would make the granting of certiorari appropriate.

### I.

### The Decision Below Is Clearly Correct

The correctness of the decision of the Court of Appeals can be reduced almost to a few basic propositions of law when the evidence is reviewed in detail. There is no evidence that the insured was in fact on the horse,

[1] *Southern Power Co. v. North Carolina Public Service Co.*, 263 U.S., 508; *Houston Oil Co. v. Goodrich*, 245 U.S. 440; and other cases cited in the Petition for Rehearing. (Supra, p. 3).

about to get on the horse, or ever took hold of the horse. The evidence revealed that the insured went to the pasture to get the horse for some children to ride.

There is no direct evidence or any eye witnesses as to how death occurred. The cause of death was determined pathologically from autopsy.

In civil cases the circumstantial evidence rule is that when a party upon whom the burden of an issue rests seeks to carry it, not by direct proof, but by inferences, he has not, in this reasonable sense, submitted any evidence for a jury's decision until the circumstances he places in proof tend in some proximate degree to establish the conclusion he claims; and for this, the facts shown must not only reasonably support the conclusion, but also render less probable all inconsistent conclusions, *White v. Executive Committee of the Baptist Convention*, 65 Ga. App. 840, 845, 16 S.E. (2d) 605; *Georgia Railway & Electric Co. v. Harris*, 1 Ga. App. 714 (3), 57 S.E. 1076, and it has been held not sufficient that such circumstantial evidence points equally one way or the other. *Federal Reserve Bank v. Haynie*, 46 Ga. App. 522, 168 S.E. 112.

It is axiomatic that when evidence tends equally to sustain either of two inconsistent propositions, neither of them can be said to have been established by legitimate proof. A verdict in favor of a party found to maintain one of those propositions against the other is necessarily wrong. *Kimberly v. Reed*, 79 Ga. App. 137, 148, 53 S.E. (2d) 208; *New York Life Insurance Co. v. Ittner*, 64 Ga. App. 806, 824, 14 S.E. (2d) 203. It is more consistent with legal justice that a given case should fail for want of evidence, than that it should succeed merely because the truth cannot be shown. *Savannah River Lumber Company v. Bush*, 37 Ga. App. 539, 140 S.E.

890; *Collett v. Atlanta, Birmingham & Coast Railroad Co.*, 51 Ga. App. 637, 181 S.E. 207.

This Court in *Pennsylvania Railroad Company v. Chamberlain*, 288 U.S. 333, at page 339, said:

> "We therefore have a case belonging to that class of cases where proven facts give equal support to each of two inconsistent inferences; in which event, neither of them being established, judgment, as a matter of law, must go against the party upon whom rests the necessity of sustaining one of these inferences as against the other, before he is entitled to recover."

This proposition that where two inferences can be drawn from evidence neither is proved is also the law of Georgia. *Gulf Life Insurance Company v. Bolt*, 80 Ga. App. 779, 783, 57 S.E. (2d) 455. Verdicts neither rest upon guess or conjecture, *Shapleigh, et al v. United Farms Company*, 100 F. (2d) 287, 289 (5th Cir.), nor can they rest on a presumption based on a presumption, *Looney v. Metropolitan Railroad Company*, 200 U.S. 480, 488, nor for that matter can an inference resting only upon an inference be permitted. *Georgia Railway & Electric Co. v. Harris*, supra.

The plaintiff had the burden of proving that the death of the insured resulted directly, independently and conclusively of all other causes from bodily injuries effected solely through external, violent and accidental means. Otherwise, the defendants were not liable upon their contract of insurance. The plaintiff had the burden of showing the death was of the sort described. *New York Life Insurance Company v. Hatcher*, 115 F. (2d) 52, 53 (5th Cir.). Plaintiff not only was required to plead, but also required to prove "accident" as set forth in the policy in order to make out a prima facie case. There was no burden on the defendant companies to

prove by a preponderance of the evidence that the injury and the consequence of death did not result from accidental means, but on the other hand that the burden was on the plaintiff throughout the trial to prove an accident such as is defined in the policy. *Greene v. Metropolitan Life Insurance Company*, 67 Ga. App. 520, 531, 21 S.E. (2d) 465; *New York Life Insurance Company v. Jennings*, 61 Ga. App. 557, 559, 6 S.E. (2d) 431; *Ryan v. Continental Casualty Company*, 47 F. (2d) 472, 473 (5th Cir.).

Neither death nor injury can be regarded as resulting from accidental means where the facts show that no unforeseen, unexpected, unusual, unintentional or involuntary muscular effort or exertion occurred in the doing of the act which preceded the death or the injury. *Cobb v. Preferred Mutual Accident Assn.*, 96 Ga. 818, 22 S.E. 976; *Continental Casualty Company v. Pittman*, 145 Ga. 641, 89 S.E. 716; *Felton v. Metropolitan Insurance Company*, 19 Ga. App. 127, 91 S.E. 228; *Johnson v. Aetna Life Insurance Company*, 24 Ga. App. 431. Cases decided by the Fifth Circuit are to the same effect, *Carswell v. Railway Mail Assn.*, 8 F. (2d) 612, 613; *Davis v. Jefferson Standard Life Insurance Co.*, 73 F. (2d) 530, 531, and this Court, in *Landress v. Phoenix Mutual Life Insurance Co.*, 291 U.S. 491, said at page 496:

> ". . . . for here the carefully chosen words defining liability distinguish between the result and the external means which produce it. The insurance is not against an accidental result. The stipulated payments are to be made only if the bodily injury, though unforeseen, is effected by means which are external and accidental."

## II.

### There Is No Conflict of Decision

The petitioner for certiorari has alluded to a conflict of decisions between Courts of Appeal of different circuits. (Petition, p. 17). The petitioner has not contended that the rules of admissibility of evidence, sufficiency of evidence or any other rule of adjective law applied by the federal court is different from Georgia adjective law. Jurisdiction of the federal court was predicated upon diversity of citizenship. This Court in *Erie Railroad v. Thompkins*, 304 U.S. 64, held that state decisions were determinative of the substantive law and were to be applied by the Courts of Appeal in diversity cases and were also binding on this Court. This Court has said as to questions controlled by State law that conflict among circuits is not of itself a reason for granting a writ of certiorari. *Ruhlin v. New York Life Insurance Co.*, 304 U.S. 202, 206. Consequently, conflicts of decisions of Courts of Appeal in non federal matters under the *Erie* doctrine of necessity can reveal no more than a difference between the laws of different states.

Petitioner further alludes to a conflict between decisions rendered by the same Court of Appeals, (Petition p. 13). It is the usual rule that the later decision in the point of time is considered controlling in the decisions of the same court. We are aware of no case in which this Court has granted certiorari to resolve a conflict of decisions within the same Court of Appeals except on an occasion when one panel of Judges does not feel themselves bound to follow a prior decision on the same issue rendered by another panel of the same Court. No such situation here is alleged to exist, or does in fact exist.

Conflict of the decision of the Court of Appeals with Georgia law is suggested by the petitioner (Petition, p. 12), but petitioner does not illustrate wherein the conflict exists and wherein it was misapplied by the Court of Appeals. In response to this contention, respondents rely on the authorities contained in Division 1 of their Argument.

Petitioner has suggested further that the decision of the Court of Appeals is in conflict with rulings of this Court. (Petition, p. 19). This she surely must do by way of make-weight since the Court of Appeals based its decision upon this Court's ruling in *Pennsylvania Railroad Company v. Chamberlain*, 228 U.S. 333. The petitioner has not suggested nor has she urged that this Court overrule that decision; neither does she suggest that it fails to state a sound and salutary proposition of law. We have been unable to find where that decision has been reversed or modified by this Court.

## CONCLUSION

The petitioner has raised no federal question important to decision or in conflict with applicable decisions. The petitioner has claimed no departure from judicial decorum requiring the supervisory power of this Court and respondents respectfully submit that there exists no conflict of decisions between Courts of Appeal or between the Court of Appeals of the Fifth Circuit and applicable state law. The petitioner asks this Court to review the evidence, the inferences drawn from it, and to discuss the facts which this Court has repeatedly said is not usually a proper exercise of its certiorari jurisdiction.

Therefore, it is respectfully urged that rehearing be granted and that upon such rehearing the writ of cer-

tiorari to the Court of Appeals for the Fifth Circuit be dismissed and that the petition therefor denied, or in the alternative, that the order of October 14, 1954, be modified to permit the case to be assigned for argument.

Respectfully submitted,

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## CERTIFICATE OF SERVICE

I, LAMAR W. SIZEMORE, certify that I have served counsel for the Petitioner for Certiorari by mailing via air mail a copy of the foregoing "Petition for Rehearing" and "Brief in Support of Rehearing and in Opposition to the Grant of Certiorari" to Robert Culpepper, Jr., Esquire, Camilla, Georgia, and Frank S. Twitty, Esquire, Camilla, Georgia, with sufficient postage affixed in compliance with Rule 33 (3) (b) of the Court.

This November ....., 1954.

LAMAR W. SIZEMORE,
Counsel of Record for Petitioners for Rehearing.